

Response

Attorney Docket: MVA1001USC3

Applicants: Rudy Mazzocchi et al.

Serial No.: 10/051,492

### REMARKS

Claims 1 to 63 are pending.

The Examiner requires restriction of one of the groups listed as follows:

- I. Claims 1-30, 50-52 and 58-59, drawn to a method of performing a balloon angioplasty, classified in class 606, subclass 108.
- II. Claims 31-49, 53-57 and 60-63, drawn to a device, classified in class 606, subclass 200.

Applicants respectfully traverse this restriction requirement. In response to this restriction requirement, Applicants provisionally elect, with traverse, claims 1 to 30, 50-52 and 58-59 (Group I), drawn to a method of performing a balloon angioplasty.

The restriction requirement among Groups I and II is improper because the Examiner has not shown that examining the subject matter of Groups I and II would constitute a serious burden. M.P.E.P. § 803 provides:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Thus for a restriction requirement to be valid, the Examiner must establish the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2) that the search and examination of the entire application cannot be made without serious burden (M.P.E.P. § 803).

The Examiner has not shown that the second requirement has been met. The Examiner has indicated one class for the subject matter of Groups I and II, and two different subclasses. Applicants respectfully submit that a search

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involving only two subclasses within the same class of subject matter does not constitute a serious burden on the Examiner.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the restriction requirement as applied to the subject matter of Groups I and II and request that the subject matter of these groups be examined together.

If any additional fees are due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 16-2312. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our deposit account.

Respectfully submitted,

Date:

8/12/04

By

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